

**NOTE: The governor signed this measure on 2/27/2013.**

# An Act

HOUSE BILL 13-1034

BY REPRESENTATIVE(S) Sonnenberg, Buck, Conti, Coram, DelGrosso, Dore, Fischer, Gerou, Ginal, Holbert, Humphrey, Lebsock, McLachlan, Mitsch Bush, Moreno, Pabon, Rankin, Schafer, Scott, Waller, Wilson, Young;  
also SENATOR(S) Giron, Jahn.

CONCERNING THE WHOLESALE MARKETING OF FARM PRODUCTS, AND, IN CONNECTION THEREWITH, AUTHORIZING ELECTRONIC WAREHOUSE RECEIPTS, MODIFYING PROCEDURES FOR LETTERS OF CREDIT AND SURETY BONDS, AND MODIFYING REQUIREMENTS FOR CREDIT SALE CONTRACTS.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 12-16-103, **amend** (3.5) as follows:

**12-16-103. Definitions - rules.** As used in this part 1, unless the context otherwise requires:

(3.5) "Credit sale contract" means a contract for the sale of a farm product when the sale price is to be paid on a date later than ~~sixty~~ THIRTY days after delivery of the farm product to the buyer and includes ~~but is not~~

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

~~limited to~~ those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, and price later contracts.

**SECTION 2.** In Colorado Revised Statutes, 12-16-106, **amend** (1) (c) and (1) (d); and **repeal** (3) as follows:

**12-16-106. Bonds and irrevocable letters of credit - exemptions.**

(1) (c) The bond or irrevocable letter of credit ~~shall~~ **MUST** be conditioned upon compliance with ~~the provisions of this part 1~~ and upon the faithful and honest handling of farm products in accordance with ~~the terms of this part 1~~ and shall cover any ~~and all~~ fees due the ~~people of the state of Colorado~~ DEPARTMENT OF AGRICULTURE by the dealer and all costs and reasonable attorney fees incident to any suit upon the bond or irrevocable letter of credit. The bond or irrevocable letter of credit ~~shall~~ **MUST** be to the ~~state~~ DEPARTMENT OF AGRICULTURE in favor of every producer, dealer, small-volume dealer, or owner and, in the instance of a bond, ~~shall~~ **MUST** remain in full force and effect until cancelled by the surety upon thirty days' prior written notice to the commissioner.

(d) (I) Any producer, owner, small-volume dealer, or other dealer within the state of Colorado claiming to be injured by the fraud, deceit, OR willful negligence OF, or failure to comply with ~~the provisions of this part 1~~ of BY, any dealer may ~~seek~~ **REQUEST** THE DEPARTMENT OF AGRICULTURE, AS BENEFICIARY, TO DEMAND PAYMENT ON THE IRREVOCABLE LETTER OF CREDIT OR SURETY BOND to recover the damages caused by ~~such~~ THE fraud, deceit, willful negligence, or failure to comply with ~~the provisions of this part 1~~. If the licensee has elected to file a bond pursuant to this section, the injured party may bring an action, with the prior written consent of the commissioner, for collection against both principal and surety in any court of competent jurisdiction. If the licensee has elected to file an irrevocable letter of credit pursuant to this section, the injured party may request the department of agriculture, as beneficiary, to demand payment on the irrevocable letter of credit.

(II) The surety on the bond or the ~~person who filed~~ **ISSUER** OF the letter of credit ~~shall~~ **IS NOT** be liable to pay any claim pursuant to any action brought under ~~the provisions of this part 1~~ if ~~such~~ THE action is not commenced within ~~twenty-four months~~ **ONE HUNDRED EIGHTY DAYS** after the date of the transaction, AS THAT TERM IS DEFINED IN SECTION 12-16-215 (12), on which the claim is based, OR THE DATE OF THE LOSS, AS THAT TERM

IS DEFINED IN SECTION 12-16-202 (10), WHICHEVER IS LATER.

(3) ~~A bond is not required for credit sale contracts.~~

**SECTION 3.** In Colorado Revised Statutes, 12-16-110.5, **amend** (1) introductory portion, (1) (a), and (1) (e) as follows:

**12-16-110.5. Credit sale contracts.** (1) When a dealer or small-volume dealer ~~receives~~ PURCHASES farm products for which payment has not been made, the dealer or small-volume dealer, within ~~sixty~~ THIRTY days after the receipt of ~~such~~ THE farm products, shall provide the producer or owner of the farm products with a credit sale contract. The credit sale contract ~~shall~~ MUST contain the following information:

(a) The type AND QUANTITY of farm products ~~received, the quantity received~~ PURCHASED and the date of ~~receipt~~ PURCHASE;

(e) ~~The statement, "This contract constitutes a voluntary extension of credit by the owner to the dealer and is not protected by the surety bond or irrevocable letter of credit of the dealer." Such statement shall be conspicuously printed on the upper one-third of the first page of the contract, set off by solid lines on all four sides, and shall include a signature block for the signature of the seller~~ ONE OR MORE STATEMENTS SPECIFIED BY THE COMMISSIONER BY RULE, INCLUDING ONE THAT WARNS A PRODUCER THAT ENTERING INTO A CREDIT SALE CONTRACT ENTAILS A RISK THAT THE BOND MAY NOT COMPLETELY PROTECT THE PRODUCER FROM LOSS IN THE EVENT OF A FAILURE OF THE DEALER OR SMALL-VOLUME DEALER.

**SECTION 4.** In Colorado Revised Statutes, 12-16-202, **amend** (6) as follows:

**12-16-202. Definitions - rules.** As used in this part 2, unless the context otherwise requires:

(6) "Credit sale contract" means a contract for the sale of a commodity when the sale price is to be paid on a date later than ~~sixty~~ THIRTY days after delivery of the commodity to the buyer and includes ~~but is not limited to~~ those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, and price later contracts.

**SECTION 5.** In Colorado Revised Statutes, 12-16-208, **amend** (1) introductory portion, (1) (a), and (1) (f) as follows:

**12-16-208. Credit sale contracts - rules.** (1) When a commodity handler ~~receives PURCHASES commodities in a manner which is not pursuant to storage~~ for which payment has not been made, the commodity handler, ~~not more than sixty~~ WITHIN THIRTY days after the receipt of ~~such~~ THE commodities, shall provide the producer or owner of the commodities with the credit sale contract. The credit sale contract ~~shall~~ MUST contain the following information:

(a) The class, ~~and~~ grade, AND QUANTITY of the commodities ~~received, the quantity received PURCHASED,~~ and the date of the ~~receipt~~ PURCHASE;

(f) ~~The statement "This contract constitutes a voluntary extension of credit by the owner to the commodity handler and is not protected by the surety bond or irrevocable letter of credit of the commodity handler." Such statement shall be conspicuously printed on the upper third of the first page of the contract, set off by solid lines on all four sides, including a signature block for the signature of the seller~~ ONE OR MORE STATEMENTS SPECIFIED BY THE COMMISSIONER BY RULE, INCLUDING ONE THAT WARNS A PRODUCER THAT ENTERING INTO A CREDIT SALE CONTRACT ENTAILS A RISK THAT THE BOND MAY NOT COMPLETELY PROTECT THE PRODUCER FROM LOSS IN THE EVENT OF A FAILURE OF THE COMMODITY HANDLER.

**SECTION 6.** In Colorado Revised Statutes, **amend** 12-16-211 as follows:

**12-16-211. Negotiable warehouse receipts - rules.** (1) ~~Upon written notice, the department shall print, bind, and deliver a sufficient number of negotiable warehouse receipts to any person operating a public warehouse. No person shall use these forms for any purpose other than in connection with the receipt of commodities for storage~~ A NEGOTIABLE WAREHOUSE RECEIPT MUST BE EITHER A PAPER OR AN ELECTRONIC DOCUMENT. AT NO TIME MAY A PAPER RECEIPT AND AN ELECTRONIC RECEIPT REPRESENT THE SAME LOT OF THE COMMODITY. A LICENSEE MAY ISSUE WAREHOUSE RECEIPTS BY USE OF A WRITTEN WAREHOUSE RECEIPT SYSTEM, AN ELECTRONIC WAREHOUSE RECEIPT SYSTEM, OR BOTH.

~~(2) Negotiable warehouse receipts shall conform to the terms set forth in section 4-7-202, C.R.S. The warehouse operator shall maintain a file of all voided, issued, and unused warehouse receipts~~ THE DEPARTMENT IS THE SOLE SOURCE OF PAPER NEGOTIABLE WAREHOUSE RECEIPTS AND SHALL FURNISH THOSE RECEIPTS AT COST.

~~(3) The department shall be the sole source of negotiable warehouse receipts and shall furnish those receipts at cost. Orders for receipts shall specify the number required and shall be submitted at least fifteen days prior to the time the receipts are needed~~ INSTEAD OF A PAPER DOCUMENT, A LICENSEE MAY ISSUE AN ELECTRONIC NEGOTIABLE VERSION OF A WAREHOUSE RECEIPT GENERATED BY A VENDOR LICENSED AND APPROVED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE IF THE RECEIPT CONTAINS THE SAME INFORMATION AS THE PAPER VERSION OF A WAREHOUSE RECEIPT. THE ELECTRONIC VERSION OF A WAREHOUSE RECEIPT CARRIES THE SAME RIGHTS AND OBLIGATIONS AS THE PAPER VERSION. A HOLDER OF AN ELECTRONIC VERSION OF A WAREHOUSE RECEIPT MAY REDEEM THE WAREHOUSE RECEIPT BY APPLYING AN ELECTRONIC SIGNATURE REGISTERED AND AUTHENTICATED BY A VENDOR CREDITED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE.

(4) THE COMMISSIONER MAY PROMULGATE RULES REGARDING THE ISSUANCE, USE, AND RECORDS REQUIREMENTS OF NEGOTIABLE WAREHOUSE RECEIPTS.

**SECTION 7.** In Colorado Revised Statutes, 12-16-212, **amend** (1) as follows:

**12-16-212. Use of scale tickets and negotiable warehouse receipts.** (1) It is unlawful to issue PAPER negotiable warehouse receipts other than those furnished by the department. THE LICENSEE SHALL ISSUE these receipts ~~shall be issued~~ consecutively, as numbered, and each receipt ~~shall be stamped with~~ MUST STATE the date on which it is actually issued.

**SECTION 8.** In Colorado Revised Statutes, 12-16-218, **amend** (1) (b) and (1) (c); and **repeal** (3) as follows:

**12-16-218. Bonds or irrevocable letters of credit - exemptions.** (1) (b) The bond or irrevocable letter of credit ~~shall~~ MUST be conditioned upon compliance with ~~the provisions of this part 2~~ and upon the faithful and

honest handling of commodities in accordance with ~~the terms of this part 2~~ and ~~shall~~ MUST cover any ~~and all~~ inspection fees due the ~~people of the state of Colorado~~ DEPARTMENT OF AGRICULTURE by the commodity handler and all costs and reasonable attorney fees incident to any suit upon ~~said~~ THE bond or irrevocable letter of credit. ~~Said~~ THE bond or irrevocable letter of credit ~~shall~~ MUST be to the ~~state~~ DEPARTMENT OF AGRICULTURE in favor of every producer or owner and, in the instance of a bond, ~~shall~~ MUST remain in full force and effect until cancelled by the surety upon thirty days' prior written notice to the commissioner.

(c) (I) Any producer or owner within the state of Colorado claiming to be injured by the fraud, deceit, OR willful negligence OF, or failure to comply with ~~the provisions of this part 2 of~~ BY, any commodity handler may ~~seek~~ REQUEST THE DEPARTMENT, AS BENEFICIARY, TO DEMAND PAYMENT ON THE IRREVOCABLE LETTER OF CREDIT OR SURETY BOND to recover the damages caused by such fraud, deceit, willful negligence, or failure to comply with ~~the provisions of this part 2~~. ~~If the licensee has elected to file a bond pursuant to this section, the injured party may bring an action, with prior written consent of the commissioner, for collection against both principal and surety in any court of competent jurisdiction. If the licensee has elected to file an irrevocable letter of credit pursuant to this section, the injured party may request the department of agriculture, as beneficiary, to demand payment on the irrevocable letter of credit.~~

(II) The surety on the bond or the ~~person who filed~~ ISSUER OF the letter of credit ~~shall~~ IS not be liable to pay any claim pursuant to any action brought under ~~the provisions of this part 2~~ if ~~such~~ THE action is not commenced within ~~twenty-four months~~ ONE HUNDRED EIGHTY DAYS after the date of the transaction, AS THAT TERM IS DEFINED IN SECTION 12-16-215 (12), on which the claim is based, OR THE DATE OF THE LOSS, WHICHEVER IS LATER.

(3) ~~A bond is not required for credit sale contracts.~~

**SECTION 9.** In Colorado Revised Statutes, 11-35-101.5, **repeal** (3) as follows:

**11-35-101.5. Irrevocable letter of credit permitted - requirements.** (3) ~~Before accepting such irrevocable letters of credit, each appropriate state agency shall determine that the financial institution upon~~

~~which such irrevocable letter of credit is drawn will be able to make payment upon such letter should it become necessary.~~

**SECTION 10. Act subject to petition - effective date - applicability.** (1) This act takes effect September 1, 2013; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on September 1, 2013, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(2) This act applies to acts occurring on or after the applicable effective date of this act.

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